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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FWP/171430

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 19, 2016, under Wis. Admin. Code § HA 3.03(4) (\*This subprogram no longer exists.), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 16, 2016, at Racine, Wisconsin.

The issue for determination is whether the agency properly discontinued the Petitioner's FS benefits due to using three time-limited benefit months.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On April 20, 2015, the Petitioner completed a FS renewal. On May 1, 2015, the agency issued a notice of FSET referral to the Petitioner. The Petitioner enrolled in FSET.
3. For May, 2015, the Petitioner logged 13.75 hours toward FSET work requirements.

4. Petitioner met FSET work requirements for June, 2015.
5. From June 26, 2015 - August, 2015, the Petitioner was incarcerated with Huber work release. The Petitioner submitted a pay statement on July 10, 2015 reporting 15.75 hours of work in July, 2015. On July 14, 2014, the agency contacted the Petitioner's employer who reported that he had work available for the Petitioner but the Petitioner was a "no show". Petitioner did not submit documentation of other work activities for July, 2015.
6. On August 5, 2015, the Petitioner reported employment at [REDACTED]. The agency requested verification due by August 17, 2015. The Petitioner failed to provide verification. Petitioner's FS case closed effective September 1, 2015.
7. On September 21 and September 30, 2015, the agency received verification from [REDACTED] of employment ending and verification of employment from [REDACTED]. On October 5, 2015, Petitioner's FS case re-opened. Petitioner was referred again to the FSET program.
8. On October 7, 2015, a new employment plan was created.
9. On October 19, 2015, Petitioner reported new employment with [REDACTED]. On October 23, 2015, Petitioner reported that he worked one day at [REDACTED] and was laid off. On October 26, 2015, employment verification was submitted reporting Petitioner was working at [REDACTED] beginning October 26, 2015. Petitioner did not submit documentation of other work activities for October, 2015.
10. On October 19, 2015, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would be discontinued effective November 1, 2015 due to using three time-limited benefits months of FS benefits (May, July and October, 2015).
11. On January 19, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

Pursuant to a provision of Wisconsin's 2007-2009 biennial budget, Wisconsin has operated a voluntary FoodShare Employment and Training (FSET) program since 2008. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) limits the receipt of FS benefits to three full months in a 36-month time period for Able-Bodied Adults without Dependents (ABAWDs) who do not meet the work requirement or meet an exemption from the work requirement.

#### 6.3.2 Non-Exempt ABAWD Participation Requirements

Non-exempt ABAWDs who do not meet the ABAWD work requirement will only be allowed to receive up to three full months of FoodShare (FS) benefits in a 36-month time period. ABAWDs subject to time-limited benefits (TLBs) may choose to meet the work requirement by participating in FSET.

As part of Wisconsin's 2014-15 biennial budget, 2013 Wisconsin Act 20 created Wis. Stat., §49.79(10), which mandated FS eligibility and work requirements for ABAWDs to be implemented in Wisconsin beginning in 2014, consistent with federal regulations 7 CFR §273.7 and 7 CFR §273.24. The program began in Milwaukee County effective April 1, 2015, and FS recipients were required to meet the requirements beginning with the next FS review completed after April 1, 2015. FoodShare Wisconsin Handbook, §3.17.1.2.

Under Wis. Stat., §49.79(10), an ABAWD is required to fulfill a work requirement. If he does not fulfill the work requirement, he is limited to receiving no more than three months' FS during a three year period. The requirements are stated in the FSET Handbook, as follows:

### **6.3.2.1 Definition of Working for ABAWDs**

For ABAWDs, working is defined as one of the following:

- Work in exchange for money;
- Work in exchange for goods or services (in-kind);
- Unpaid work (e.g. volunteer work, community service);
- Self-employment; or
- Any combination of the above.

### **6.3.2.2 ABAWD Work Requirement**

An ABAWD is considered to be meeting the ABAWD work requirement if one of the following applies:

- Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;
- Participating in and complying with the requirements of an allowable work program at least 80 hours per month; or
- Both working and participating in an allowable work program for a combined total of at least 80 hours per month.
- Participating in and complying with the requirements of a workfare program.

FSET Handbook, §§ 6.3.2.1 & 6.3.2.2; and see FoodShare Wisconsin Handbook at §3.17.1.

To meet the work requirement the ABAWD must work a minimum of 80 hours per month, participate in a work program 80 hours per month, or a combination of both for 80 hours per month. FoodShare Wisconsin Handbook, §3.17.1.7. The person is limited to three months of FS eligibility in which he is not meeting the 80-hour requirement and is not exempt. *Ibid.*, §3.17.1.9. FS ends after three months of failing to meet the work requirement, but eligibility can begin again if the person becomes exempt or meets the work requirement for a 30-day period (the person could reapply for FS after meeting the requirement for 30 days). *Ibid.*, §3.17.1.11.

In this case, the Petitioner asserted that he met the work requirements for July, 2015 but he did not submit the documentation of such to the agency. He also did not submit the documentation at the hearing. The Petitioner presented no evidence at the hearing to demonstrate that he met the FSET work requirements in May, July or October, 2015. He further asserted that his incarceration interfered with his ability to meet work requirements. There is no exemption in the FSET regulations for incarceration. Further, Petitioner had Huber work release so the incarceration should not have presented a barrier to meeting work requirements.

Based on the evidence presented, I conclude the agency properly determined the Petitioner was no longer eligible for FS benefits effective November 1, 2015 due to using three months of time-limited FS benefits.

### **CONCLUSIONS OF LAW**

The agency properly determined the Petitioner was no longer eligible for FS benefits effective November 1, 2015 due to using three months of time-limited FS benefits.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 15th day of March, 2016

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 15, 2016.

Racine County Department of Human Services  
Division of Health Care Access and Accountability